IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 5TH FEBRUARY 2007 / 16TH MAGHA 1928

WP(C).No. 16810 of 2004(A)

PETITIONER:

K.N.BALAKRISHNAN, ARUNAGIRI,
KURATTIKKADU, MUNNAR (RETD.STATION
MASTER KERALA STATE ROAD TRANSPORT CORPORATION,
CHENGANNUR, MAVELIKKARA).

BY ADV. SRI.M.R.RAJENDRAN NAIR (SR.)
SRI.M.R.SUDHEENDRAN
SRI.HARIRAJ
SMT.VINEETHA B.
SMT.REKHA VASUDEVAN

RESPONDENTS:

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1. THE KERALA STATE ROAD TRANSPORT CORPORATION
(K.S.R.T.C.) REP. BY MANAGING DIRECTOR,
THIRUVANANTHAPURAM.

2. THE CHIEF ACCOUNTS OFFICER(PENSION),
PENSION AND AUDIT SECTION K.S.R.T.C.
TRIVANDRUM.

BY ADV.SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.16810 OF 2004

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF MEMORANDUM DT.22.1.75 ISSUED BY THE INDUSTRIAL RELATIONS MANAGER, KSRTC.

EXT.P2 – TRUE COPY OF MEMORANDUM DT.20.5.80 ISSUED BY THE GENERAL MANAGER.

EXT.P3 – TRUE COPY OF ORDER DT.19.3.88

EXT.P4 – TRUE COPY OF GO DT.22.8.1968

EXT.P5 – TRUE COPY OF MEMORANDUM DT.18.1.92

EXT.P6 – TRUE COPY OF DO. DT.27.5.92 ISSUED BY RESPONDENTS.

EXT.P7 – TRUE COPY OF ORDER DT.20.9.96

EXT.P8 – TRUE COPY OF PAY REFIXATION ORDER DT.26.2.01.

EXT.P9 – TRUE COPY OF ORDER DT.28.11.03.

EXT.P10 – TRUE COPY OF ORDER DT.3.4.04

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.16810 OF 2004

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DATED THIS THE 5TH FEBRUARY, 2007

J U D G M E N T

The petitioner, a retired Station Master of the K.S.R.T.C. is aggrieved by Exts.P9 and P10 orders rejecting his request for counting the period treated as 'dies non' for the purpose of pension. Ext.P1 is the appointment order dated 22.1.1975 by which he could join the services of the K.S.R.T.C. as a reserve conductor. While so, he was served with an order dated 24.7.1976 informing him that his services have been terminated for the reason that he had suppressed factual information in the attestation form. However, by Ext.P2 order dated 20.5.1980 he was reinstated in service. Later by Ext.P3 order dated 19.3.1988, his original rank of conductor from the date of advice and seniority were restored. But the period of absence from 24.7.1976 till 20.5.1980, i.e., the period during which he was kept out of service was treated as dies non. Several representations were submitted by the petitioner requesting that the period ordered to be treated as dies non be treated as duty and his pay and allowances for the period be given to him in view of Ext.P4 Government Order (G.O.(MS) No.283/68/Home dated 22.8.1968). Since his request was not considered, he approached this Court. This Court by judgment dated

8.11.1991 in O.P.No.10681 of 1990 directed the K.S.R.T.C. to consider the petitioner's request in the light of Ext.P4. Accordingly the K.S.R.T.C. issued Ext.P5 order holding that the petitioner is eligible for promotion fixing the original rank and seniority subject to completion of probation as Conductor Grade II. But it was further stated that he is not eligible for wages for the period treated as dies non and that the said period will not count for earning leave. Thereafter, Ext.P6 memorandum dated 27.5.1992 was issued by the respondents. Under Ext.P6 the rank and seniority of the petitioner in the draft gradation list of Conductors was fixed on the basis of original rank and seniority fixed by the Public Service Commission. While so, on 4.3.1993, the 2nd respondent (the Chief Accounts Officer (Pension), K.S.R.T.C.) issued proceedings granting grade promotion to the petitioner with effect from earlier dates on notional basis. Against notional promotions the petitioner filed O.P.No.4775 of 1994 before this Court. This Court by judgment dated 11.10.2004 allowed the Original Petition and directed payment of monetary benefits arising out of promotion in respect of the period he had been on duty as Conductor. Accordingly by Ext.P7 order, the notional promotions were withdrawn and the petitioner was granted monetary benefits and his

pay was also refixed. Ext.P8 is the copy of pay refixation order. The petitioner retired on 30.9.2003 while serving as Station Master. His request for refixation of pension by counting the entire service including the period treated as dies non in accordance with Ext.P4 G.O. however was rejected. Exts.P9 and P10 are the orders issued in that regard. The petitioner prays in this Writ Petition that Exts.P9 and P10 be quashed and it be declared that he is entitled to get his pension and pensionary benefits refixed by counting the entire service including the period of dies non.

2. A counter affidavit has been filed on behalf of the 1st respondent-Corporation. It is contended therein that as per the rules in force in the Corporation, dies non due to strike alone will be reckoned for qualifying service for pensionary benefits and the period of dies non due to other reasons will not be considered for reckoning qualifying service. Therefore, there is no warrant for reconsidering Ext.P9. It is further contended that as per Ext.P4 the debarment period between the date of original advice and the date of actual appointment will be counted as duty for the purpose of pension. This benefit cannot be extended to the petitioner since the debarment period is not after the P.S.C. advice and actual appointment. The

debarment occurred while he was in actual service and the Public Service Commission terminated him for suppression of facts. The G.O. does not mention to count this type of dies non for qualifying service for pension.

3. Heard Adv.Smt.Rekha Vasudevan representing Mr.M.R.Rajendran Nair, Senior counsel for the petitioner and Mr.K.Prabhakaran for the respondents.

4. Having regard to the various documents placed on record, I am of the view that the contention of the K.S.R.T.C. that Ext.P4 will not enable the petitioner for relief is too technical for acceptance. It was not due to any fault of the petitioner that he was inflicted with dies non. In fact, the Corporation has treated that period as duty for all purposes except pension, though it be due to various judgments passed by this Court. If that be so, I do not find any reason as to why for pensionary benefits also the same should not be considered.

5. The result of the above discussion is that the Writ Petition will stand allowed, Exts.P9 and P10 are quashed and there will be a declaration that the petitioner is entitled to get pension and pensionary benefits refixed by counting the entire service including the period of dies non. The respondents will do the needful on the basis of the

above declaration and all monetary benefits flowing out of such declaration will be released to the petitioner at the respondents' earliest and at any rate within three months of receiving copy of this judgment. The parties will bear their respective costs.

(PIUS C. KURIAKOSE, JUDGE)

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